Petition

81-1163

No.

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
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In the

Supreme Court of the United States

OCTOBER TERM, 1981

ANABEL J. McCUTCHEON,

Petitioner,

vs.

CHICAGO BOARD OF EDUCATION, President KENNETH SMITH, JAMES SCANLON, CHICAGO FINANCE AUTHORITY, JEROME VAN GORKOM, PAUL H. HEINEKE, CHRISTINE ZIELINSKI, THOMAS BROWN,

Respondents.

Appeal from the United States Court of Appeals for the Seventh Circuit

Judge HARLINGTON WOOD
Judge WALTER CUMMINGS
Judge WILLIAM BAUER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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The Scheffer Press, Inc.—(312) 263-6850

Oral Argument Requested

QUESTIONS FOR REVIEW

I. Whether a federally funded public school Board can make retroactive or secret contracts, with private attorneys and pay them from public funds after the fact of their services without said contracts mandated by the State of Illinois.

II. Whether the ATTORNEY FOR THE BOARD, MICHAEL J. MURRAY (resigned) maliciously and knowingly misused public funds and his office, 1976-1981 by making unlawful contracts for defense of HIMSELF and over 30 unbonded individual employees, members, agents with the knowledge, tacit consent of the Defendant Board, Finance Officer, Joseph P. Mahran; Defendant Chicago Finance Authority Committee and Chairman, Jerome Van Gorkom.

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COMES NOW, Anabel J. McCutcheon, a woman non-attorney, on her own behalf and respectfully petitions this Honorable Court to issue a Writ of Certiorari to—

or in the alternate a Change of Venue from—the all male United States Court of Appeals, politically affiliated with Defendants in #81-198[illegible], *McCutcheon* v. *The Chicago Board of Education, The Chicago Finance Authority, Et. Al.* for the reason:

That the United States Court of Appeals has decided important State and Federal Questions in a way that is in conflict with the applicable decisions of the Illinois Supreme Court:

1. *Aulwurn* v. *Board of Education,* 67 Ill. 2d 434 (1977)

2. *Grissom* v. *Board of Education,* 75 Ill. 2d 314 (1979)

3. *Jones* v. *Hannon,* 58 Ill. App. 3d 504

4. *Polich v. Chicago Finance Authority,* 79 Ill. 2d 188.

and in conflict with the applicable decisions of the United States Supreme Court:

5. *Butz* v. *Economu,* 98 S.Ct. 2894 (1978)

6. *Hampton* v. *Hanrahan,* 77-1689, 77-1210, 1370

7. *Richmond Newspapers, Inc. Et. Al. #79-243* v. *Commonwealth of Virginia*

8. *Gomez* v. *Toledo,* 40 CCH S.Ct. Bull. p. 2453.

"RES JUDICATA"

That the Honorable Judge John A. Nordberg of the Cook County Circuit Court of Illinois reversed the decisions of the Illinois Supreme Court in *Aulwurn, Grissom,* and *Jones, supra* on the misrepresentations of Defendant JAMES SCANLON, Assistant Board Attorney and MICHAEL J. MURRAY, the ATTORNEY for the

BOARD in their over-zealous defense of HIMSELF and individual employees.

Basing his decision on the above "Res Judicata" (still in appeal) and the misrepresentations of private attorneys PAUL HEINEKE, THOMAS BROWN, CHRISTINE ZIELINSKI, the Honorable Judge George N. Leighton of the United States District Court reversed the decisions of the U.S. Supreme Court in *Butz* v. *Economu, Hampton, Gomez, supra* on the misrepresentations of Paul Heineke, Thomas Brown, Christine Zielinski, and Michael J. Murray—granting janitors, teachers, and all others who testified against Petitioner —"judicial immunity". [76 C 4763; 78 C 3899; 78 C 3894; 78 C 3955] At the same time he denied Petitioner a public jury trial: "Petitioner received unequal pay, 1971-1975 (EEOC charges) because she was insubordinate, 1976-1977".

That the Honorable Judges Aspen, Parsons ruled contrary to the Illinois Supreme Court in *Polich, supra;* ruled without consideration of the U.S. Supreme Court decision in *Richmond Newspapers, Inc. supra* and thus suppressed the errors of the Court and the criminal theft of public funds by Defendants.

That non-attorney Petitioner presented the text, chapter, and verse of the above decisional authorities, but the merits of her cause failed to be considered by the lower or the appellate courts in favor of "gossipy" ex parte communications [App. C, D, pp. 14a-17a] of Defendants PAUL HEINEKE, THOMAS BROWN, and CHRISTINE ZIELINSKI without any evidence in any court record of their allegations of "pre-existing" (alleged April, 1979 after their appearances before 28 CHICAGO JUDGES without producing any evidence of said contracts p. 1a)

Pursuant to Rule 17.1 of the United States Supreme Court wherein a federal court has departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by a lower court as to call for an exercise of this Court's power of supervision:

Petitioner seeks consideration of this Petition for a Writ of Certiorari.

OPINIONS BELOW

All the OPINIONS (Judges Aspen, Parsons, Sussman, Bauer, Cummings, Wood) were rendered "via mail"; untimely; oral argument was permitted only by Defendants' Attorneys; Plaintiff denied the right to speak to her motions and denied public hearing.*

1. June 1, 1981 Summary Judgment of Judge Marvin Aspen dismissing all Defendants after Change of Status Hearing until June 12. It is unpublished and reprinted herein in Appendix "A", p. 1a.

2. September 18, 1981 sua sponte order of Judge Cummings, Bauer, Wood after three years of ex parte communications with Defendants BROWN, HEINEKE. It is unpublished and reprinted herein in Appendix B, p. 12a.

3. Docketed May 19, 1981 Refusal of a Change of Venue by Chief Justice Parsons without regard to the briefing schedule of Judge Aspen. It is unpublished and reprinted here in Appendix "G", p. 26a.

4. October 22, 1979 Excerpt from the Oponion of JUDGE JOHN A. NORDBERG, Circuit Court of Cook County,

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* The procedure of every Judge when Plaintiff presented her motion, was to turn to the attorneys for an explanation, then ruling: denying Plaintiff the right to present or argue her motion because she was not an attorney

wherein three decisions of the Illinois Supreme Court are reversed to create a "Res Judicata" for the Defendant Board of Education.

It is unpublished and reprinted App. F, p. 23a (Printed in full in a latter Brief, "Petition for a Writ of Certiorari, Illinois Supreme Court #54963")

JURISDICTION

Jurisdiction is invoked in the United States Supreme Court under Title 28 U.S.C. §2202 (1970)

"Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

Original Jurisdiction was invoked under Title 42 U.S.C. §1983, §1988 and Title 18 U.S.C. §241 for the conspiracy of hiring private attorneys "under the counter", 1976-1981 to fire Plaintiff; deprive her of a means of a livelihood; deny her a fair trial; jury trial on criminal charges of which she was previously acquitted; and deprive her of fair appeals in the Seventh Circuit Court of Appeals and the U.S. Supreme Court.

* Please note that Defendants answered (the Judges of the Court concurring, App. A, p. 1a) under §1985 CLASS ACTION—JURISDICTION NEVER INVOKED BY THE PLAINTIFF.

That the denial of the public documents, other records detrimental to Defendants has suppressed the evidence of the criminal misuse of funds, personnel, 1976-1981 against specific Defendants and their attorneys herein named. Said certain defendants being fired by the Illinois Legislature for the misuse of half a billion dollars and

personnel on May 1, 1980; said "dismissal from the service" being upheld by the Illinois Supreme Court in *Polich* v. *The Chicago Finance Authority*, 79 Ill. 2d 188 and in violation of the strict sanctions imposed in P.A. #81-1221, p. 9 on Defendants, effective Jan. 16, 1980 which the Chicago Courts of Judges Parsons, Leighton, Aspen, Crowley, and Magistrate Sussman and the U.S. Circuit Court of Judges Bauer, Cummings, Sprecher, Wood, and Cudahy failed to recognize or implement under Title 42 U.S.C. 1983.

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment V: Guaranty of Trial By Jury; Private Property Respected:

> . . . nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

United States Constitution, Amendment XIV: Definition of Citizenship

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Seventh Circuit Court of Appeals Jurisdiction was invoked for a Writ of Mandamus for the Public Record in accordance with 28 U.S.C. §1651 Writs and §1652 Judicial Procedure:

> "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usuages and principles of law."

Pursuant to the Public Information Act of 1967; the State Records Act of 1957, Section 43:

> "'Agency' means all parties, boards, and commissions . . . 'Public officers' mean all officers of the executive branch . . . and all other officers (Van Gorkom) and heads, presidents (Kenneth Smith) or Chairmen of said boards, commissions, and agencies of the STATE GOVERNMENT . . ."

ILLINOIS STATUTES

Ill. Rev. Stat., 1975 Chapter 122 (School Law):

> §34-18.1 *Protection from suit.* The board of education shall insure or indemnify and protect the board, any member of the board or any agent, employee, teacher, student teacher, officer or member of the supervisory staff of the school district against financial loss and expense, including reasonable legal fees and costs arising out of any claim, demand, suit, or judgment by the reason of alleged negligence, alleged violation of civil rights occurring on or after September 5, 1967. . . ."

[The Board of Education, City of Chicago has been in violation of this statute-not having been "bonded" since December, 1975 for lack of funds]

Ill. Rev. Stat., 1975 Chapter 122 (School Law)

§34-49 *Contracts, expense and liabilities without appropriation*:

> "No contract shall be made or expense or liability incurred by the Board, or any member of committee thereof, or by any* person for or in its behalf, not-

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*ROBERT WARD, alleged insurance administrator has no jurisdiction to make "lawful contracts" for the Board of Education: Nor is there any evidence of such contracts in the public Board or ANY COURT RECORD, 1976-1981.

withstanding the expenditure may have been ordered by the board, unless an appropriation therefore has been previously made. Neither the board, nor any member of committee, officer, head of Department [Defendant MICHAEL J. MURRAY] or employee thereof shall during a fiscal year expend or contract to be expended any money, or incur any liability, or enter into any contract which by its terms involves the expenditure of money for any of the purposes for which provision is made in the budget, in excess of the amounts appropriated in the budget. Any contract, verbal or written, made in violation of this section is void as to the board, and no moneys belonging thereto shall be paid thereon."

Ill. Rev. Stat., 1975: Chapter 122 (School Law):

§34A-606 (new paragraph—P.A. 81-1221)
(Ch. 122, new par. 34A-606) [S.H.A. ch. 122, ¶ 34A-606]

Sec. 34A-606. Initial and annual reports. The Directors, upon taking office and annually thereafter, shall prepare and submit to the Governor, Mayor, General Assembly, and City Council a report which shall include the audited financial statement for the preceding Fiscal Year of the Board, an approved Financial Plan or a statement of reasons for the failure to adopt such a Financial Plan, a statement of the major steps necessary to accomplish the objectives of the Financial Plan, and a request for any legislation necessary to achieve the objectives of the Financial Plan. The initial report of the Directors shall be submitted on or before April 1, 1980. Subsequent reports shall be submitted on or before January 1 of each year.

(Ch. 122, new par. 34A-607) [S.H.A. ch. 122, ¶ 34A-607]

Sec. 34A-607. Audit of Authority. The Authority shall be subject to audit in the manner now or hereafter provided for the audit of State funds and accounts. A copy of the audit report shall be submitted

to the Auditor General, the Governor, the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate.

Ill. Rev. Stat., 1975: Chapter 122 (School Law):

§34A-608 (new paragraph—P.A. 81-1221)
(Ch. 122, new par. 34A-608 [S.H.A. ch. 122, ¶ 34A-608]

Sec. 34A-608. Sanctions. (a) No member, officer, employee, or agent of the Board shall commit the Board to any contract or other obligation or incur any liability on behalf of the Board for any purpose if the amount of such contract, obligation or liability is in excess of the amount authorized for that purpose then available under the Financial Plan and Budget then in effect.

(b) No member, officer, employee, or agent of the Board shall commit the Board to any contract or other obligation on behalf of the Board for the payment of money for any purpose required to be approved by the Authority unless such contract or other obligation has been approved by the Authority.

(c) No member, officer, employee, or agent of the Board shall take any action in violation of any valid order of the Authority or shall fail or refuse to take any action required by any such order or shall prepare, present, or certify any information (including any projections or estimates) or report for the Authority or any of its agents that is false or misleading, or, upon learning that any such information is false or misleading, shall fail promptly to advise the Authority or its agents.

(d) In addition to any penalty or liability under any other law, any member, officer, employee, or agent of the Board who shall violate subsections (a), (b), or (c) of this Section shall be subject to appropriate administrative discipline, including, if warranted, suspension from duty without pay or removal from office as provided by law.

Section 2. This Act takes effect upon its becoming a law. [S.H.A. ch. 122, ¶ 18-8 note]

Approved: January 16, 1980 Effective: January 16, 1980

STATEMENT OF FACTS

1. December 31, 1975 Expiration of Board Insurance Contract with Harbour Ins. Co. to "indemnify" the Board, employees, agents, in accordance with the state statute, #34-18.1, p. 7.

2. Jan. 1-Apr. 1, 1976 (three months' period of grace) No renewal of said contract or representation of the law firm of Heineke, *et al.*

3. July 28, 1976 Petitioner's request for a "Right To Sue" Letter acknowledged by the EEOC, TCH 5-0006.

4. Sept. 7, 1976 Petitioner was suspended without charges;

Sept. 16, 1976 Petitioner was "charged" with ten counts—including two criminal charges of which she was acquitted.

5. Dec. 28, 1976 Petitioner exercised her "Right to Sue" by filing a Title VII action against the Chicago Board of Education for reduction of pay, 1971; unequal pay, 1972-1976 with men principals, District Three: 76 C 4763.

6. June 24, 1977 PAUL H. HEINEKE represented the Board without any statutory "Right to Defend" a public body at public expense.

7. Sept. 27, 28, 29, 1978 Petitioner, non-attorney filed 78-3894, 78-3899, 78-3955 for Deprivation of a Means of a Livelihood as a Teacher, Principal, Locked Doors of an Alleged Public Hearing.

8. Oct. 16, 1978 Private Attorneys, who had filed no appearances for Defendants solicited the consolidation (from H. Stuart Cunningham, Clerk of the Court) of these causes with the Title VII cause for which they still had no public contract.

9. Oct. 20, 1978 These letters were not docketed, but were sent "ex parte" to Judges Grady, Leighton, Marshall by NINA CUNNINGHAM, Administrative Assistant to H. Stuart Cunningham, without any notice to Plaintiff, who discovered them hidden in the files she first saw, January 29, 1981 after filing a complaint against the Clerk for the loss, "alteration", and refusal to submit 40 trial transcripts to the Appellate and Supreme Courts.

10. Nov. 1, 1978 Judge John Grady ordered Defendant Attorney Paul Heineke to show cause why he was soliciting this consolidation from the Clerk and Judges "ex parte".

11. Nov. 3, 1978 Judge Leighton consolidated this cause and two others after dismissing Plaintiff's attorneys before trial; denying her the Court Record (denied her by H. Stuart Cunningham); denying her any discovery in this cause; and subsequently denying her a PUBLIC JURY TRIAL BECAUSE THESE CAUSES WERE CONSOLIDATED TITLE VII.

12. Nov. 7, 8, 9, 1978 Judge James B. Parsons issued the executive orders of transfer IPSO POST FACTO the consolidation "take-over" by Judge George N. Leighton.

13. Nov. 20, 1978 "E. Dinger" (the latter identified as a Deputy Clerk, subordinate to H. Stuart Cunningham) submitted an opinion "ex parte" to Appellate Court

Judges William Bauer, Robert A. Sprecher, Harlington Wood, Walter Cummings (76 C 4763 of an alleged interlocutory appeal BEFORE ANY NOTICE OF APPEAL, Nov. 24, 1978.

14. Jan.-March, 1979 Denials of Appeals of the wrongful consolidation of Judge George N. Leighton, former city of Chicago corporation counsel, on the alleged "interlocutory-non-jurisdictional" defense of HEINEKE, BROWN, through the Clerks, who had altered the records. Items #8, #9, #10 have been encompassed in the complaint against H. Stuart Cunningham, Charlie Webb, Deputy Clerk of the 7th Circuit [81 C 686, 81 C 1143]. That the rulings appealed were rendered immediately following Plaintiff's Motion for Default in the U.S. District Court and presentation of all the documentary evidence—never submitted to the Seventh Circuit Court of Appeals because it was detrimental to the Defendants.

False Affidavits filed by Defendants

15. February, 1981—"Counter-Claim" of Defendants PAUL HEINEKE, THOMAS BROWN, CHRISTINE ZIELINSKI, PRESIDENT KENNETH SMITH that said attorneys were City of Chicago Corporation Counsel —the lie placed before Judge Leighton in the Title VII EEOC cause.

16. March, 1981 Refuted by Plaintiff [App. E, p. 21a].

17. February, 1981 all Defendants' Motions for dismissal based on alleged "preexisting" contracts, April, 1979.

18. March, 1981 Refuted by Plaintiff as said contracts had no basis in law or equity; were created after the fact of their representation of employees June 24, 1977-March, 1979 in the Title VII suit 76 C 4763.

19. June 1, 1981 Alleged Contracts, April 1, 1976-1982 [WITH NO EVIDENCE] by conspiracy with one ROBERT WARD, alleged insurance investigator. Said contracts are falsely placed before the Court:

1. No insurance company is named because no insurance company had any contract.

2. Said million dollar insurance contracts do not exist in the 1975-1976 Agendas (published);

in any Court Reporter's transcript of public meetings of Board.

3. Defendants were never approved to represent Board employees per the Recommendation, Resolution below.

May 8, 1974

74-456

PAY BILL OF JENNER AND BLOCK FOR LEGAL SERVICES

RECOMMENDATION:

That the bill of Jenner and Block in the amount of $4,750 for professional services rendered from November, 1973 through March, 1974 be paid.

DESCRIPTION:

Judgment has been entered for defendants in the suit of Charles Eugene Rhodes, et al., v. City of Chicago in Trust for the Use of Schools, et al., 73 C 1425 which is an action in Federal District Court, for injunctive relief and damages against the Board of Education, Dr. James F. Redmond, Michael J. Murray, Frank S. Righeimer and Richard E. Girard involving the acquisition of property for an addition to the site at Van Vlissingen School. A notice of appeal has been filed to the Court of Appeals 7th Circuit by plaintiffs. Because the Board, its Attorney, Special Attorney and an Assistant Attorney in the Law Department are named as defendants it was necessary as we previously reported that outside counsel be retained to detfend the case. The firm of Jenner and Block has submitted a statement for legal services which is on file in the Office of the Setcretary.

SUPPORTIVE DATA:

The charges for professional services are proper and reasonable, are the usual and customary charges made by Jenner and Block for such services in federal

court actions; that the services rendered were required and satisfactorily performed.

FINANCIAL:

Charge to 14-1-101-41. Legal Expenses.....$4,750.

Respectfully submitted,

MICHAEL J. MURRAY
Attorney

Prepared by:
FRANK S. RIGHEIMER
Special Attorney
Within Appropriation:
ROBERT STICKLES
Controller

77-105

January 26, 1977

RESOLUTION

Burger v. *Board of Education of the City of Chicago, Saul Samuels, Blaine DeNye,* 75 L 10160

Winburg v. *B and C Electric, Inc., Board of Education of the City of Chicago and Saul Samuels 74 CH 7338*

It is hereby resolved that the Board of Education pay the reasonable legal fees incurred by Saul Samuels, former Director, Bureau of Architecture, and Blaine DeNye, a Board employee in defending the above causes of action in which the Board of Education is a co-defendant, and is represented by the Law Department. Statement for said reasonable legal fees will be submitted to the Law Department and is subject to Board of Education approval. The Attorney is directed to take steps to recoup said fees in the event a final judgment is rendered finding the individual defendants were not acting under

the direction of the Board within the course or scope of their duties.

Plaintiff charges that:

1. Defendants invented these contracts, retroactively and have presented insufficient evidence that such contracts existed, 1976-1981.

2. these contracts were placed before sympathetic CHICAGO JUDGES ex parte because of the Defendants' involvement in the criminal theft of public funds causing the $550,000,000 bankruptcy, 1979.

3. the ATTORNEY FOR THE BOARD, MICHAEL J. MURRAY (like JOSEPH P. HANNON) was forced to resign in secret personnel session, October, 1981 because it was discovered after the filing of this complaint that Defendant MURRAY was guilty of violating the Illinois Statutes, herein, p. 7 by granting these private attorneys, millions of dollars in legal fees WRONGFULLY TRANSFERRED from teacher salaries for the personal defense of himself and 30 unbonded employees, 1976-1981.

4. these contracts were not placed before the federal court by affidavit of Robert Ward, alleged insurance administrator, because they did not exist—neither did he on April 1, 1976 as an insurance administrator.

5. there is no insurance company named because said insurance company would refute this claim of Defendants as Stanley Garber refuted their claim of City of Chicago corporation counsel—the lie placed before Judge George N. Leighton and on 40 court trial transcripts, June 24, 1977-Feb. 28, 1980.

6. there is no jurisdiction for a Robert Ward to make millions of dollars in contracts outside the Open Meetings of the Board without the approval of the Board.

REASONS FOR GRANTING THIS WRIT

Pursuant to the recent U.S. Supreme Court decision: *Richmond* v. *Commonwealth of Virginia, Et. Al. supra* #79-243, which granted certiorari to review dismissal of subpoenaed witnesses:

> "Expressly guaranteed freedoms of the First Amendment share common core purpose of assuring freedom of communication on matters relating to the functioning of government."

and pursuant to the Illinois State Statutes, revised, 1975: chapter 102: §41: Public Policy:

> "It is the public policy of this state that the public commissions, committees (CHICAGO SCHOOLS FINANCE), boards and councils and other public agencies in this State exist to aid in the conduct of the People's business. It is the intent of this Act that their actions be taken openly and that their deliberations be conducted openly."

Wherefore, Defendants can not make SECRET and/or RETROACTIVE* contracts (Be they TRUE or FALSE) with private attorneys and pay them from public funds after the fact of their services without said contracts mandated by the State, [Ill. Rev. Statutes, pp.....].

Defendants MICHAEL J. MURRAY, THOMAS BROWN, PAUL HEINEKE, CHRISTINE ZIELINSKI, *Et. Al.* other lesser attorneys (17) Board of Education, knowingly and maliciously conspired in the criminal theft of public funds and suppressed such evidence against

* A retroactive contract is truly a nonpublic contract because it has not been timely published.

employees Board of Education they improperly represented, 1976-1981 with the tacit consent of the Board of Education, Chicago Finance Authority: the latter being in total disregard of the Statute which created it and the strict *SANCTIONS disregarded* [Ill. Rev. Stat. 81-1221, p. 9].

Any ex parte testimony by Robert Ward, [Never submitted to Plaintiff] alleged insurance administrator, 1976 is insufficient evidence prejudicially accepted by the Court: A six-year million dollar insurance contract with a nameless insurance firm for equally nameless attorneys being kept a secret for five full years? Proper evidence of contracts must be presented by the Chief Finance Officer Joseph P. Mahron and/or a sworn affidavit of the Secretary of the Board with the agenda and passage of such a public contract.

In the absence of said evidence, Petitioner now moves that the U.S. Department of Justice be ordered to investigate alleged million dollar contracts and persons testifying to same: Robert A. Ward, Defendants. That Defendants admitted in their brief before the U.S. Supreme Court, #80-724 that they had no contracts after April, 1976—now they contradict that statement with no evidence of either—and are indulged unfairly by Judges Aspen, Sussman, (Cummings, Parsons in ex parte communication for three full years).

CONCLUSION

The Seventh Circuit Court of Appeals failed to rule on the Statutory Authority of these private attorneys

to represent the Board, employees of the Board in a Title VII suit in which Judge Leighton had permitted them to do so, 1977-1980.

However, the Seventh Circuit Court of Appeals contradicted itself in denying these attorneys any fees whatsoever in an untimely appeal brought improperly by the Clerk of the Court, Aug. 1981.

Likewise, Judge Marvin Aspen denied attorneys any fees in response to their counter-claim—but also denies Plaintiff her right to seek redress of grievances in the federal court—as he denied her the right to a public jury trial at the same time he always granted hearings to Defendant Attorneys: March—June, 1981.

That Judge Marvin Aspen denies the "unlawful contracts" charged by Plaintiff but, contradicting himself, refuses Defendants any posted bond against the CHICAGO Board of Education because they are not City of Chicago Corporation Counsel with lawful contracts.

The Chicago Judges of the U.S. District Court, Seventh Circuit Court of Appeals, prejudically erred (after ex parte communications) in recognizing "unlawful contracts" of Defendants with no evidence of any contract in any Board or Court public record, 1976-1981:

That the Court denied a non-attorney, victim and taxpayer due process by denial of a Change of Venue from Chicago any by denial of the public records suppressed because of their evidence of the criminal theft of public funds by Defendants:

Such IBM DATA PROCESSING PUBLIC RECORDS, BOARD OF EDUCATION, CITY OF CHICAGO must acount for all monies and list all vendors paid by date, unit, number of Board mandate authorizing alleged con-

tract; list exact and specific amounts paid to whom, for what, and person authorizing—Just as "Pay Bill of Jenner and Block" page would be listed as follows:

5-8-74 / 14-1-101-41 / JENNER AND BLOCK/
73 C 1425

Bd. Report #74-456 / $4,750.00 Michael Murray

That with absence of evidence of contracts: such records of payment to HEINEKE, BROWN, ZIELINSKI, 1976-1981 did not exist because they were "unlawfully" paid "under the Counter" by the illegal transfer of funds—for which the Board was fired by the Illinois Legislature: That Defendant MICHAEL J. MURRAY knowingly and maliciously created this misuse of his office and public funds.

That said Board, Finance Officer of the Board, Chicago Schools Authority have denied Plaintiff public records, 1976-1981 in violation of the Freedom of Information Act, State Records Act and have negligently suppressed misuse of public funds in overpayments of salary, private legal services to defunct Board Members, employees, agents in violation of P.A. 81-1221.

That to deny Plaintiff discovery of the one "Bonded" officer JEROME VAN GORKOM or place a protective order on information that has been published in the Media, before the Legislative Committee investigating the Board or in evidence in the Hay Associates Report, paid for with public funds BORROWED FROM THE STATE —depriving school children of other districts—is to suppress evidence of criminal misconduct and establishes a dual system of justice for the Defendant Agencies and the Plaintiff victim.

Plaintiff seriously questions the gullibility of the CHICAGO COURTS:

1) believing Defendants Board of Education and the City of Chicago, who have a national disgraceful record for dirty politics in the schools and government;

2) believing specific Defendants Board, Hannon, MICHAEL J. MURRAY, brother of James C. Murray, Circuit Court of Cook County and another former City of Chicago Corporation Counsel—specific Defendants fired by the Illinois State Legislature for the misuse of public funds, looting of the public schools by such unlawful contracts to their politically affiliated friends—not only in insurance contracts—DIRECT FROM JOE HANNON'S OFFICES BOARD AND CITY (App. G, p. 26a) but in rehab contracts at the AUDUBON SCHOOL for over $5,000,000 to ILLINOIS BELLI, BELLI, friends of former President of the School Board, JOHN CAREY, resigned by popular acclaim in November, 1979 and dismissed *twice* by former City of Chicago Corporation Counsel, the Honorable Judge George N. Leighton, before whom the Plaintiff's evidence was placed.

Plaintiff questions the integrity of the Courts:

1) Judge Parsons, Judge George N. Leighton, former City of Chicago Corporation Counsel denials of Change of Venue, after three full years of ex parte communications with Defendant Attorneys, PAUL HEINEKE, THOMAS BROWN, App. C., D., pp. 14a-17a and suppressing the evidence of padded public payrolls in a Title VII suit that the U.S. Department of Justice was negligent in supervising, Dec. 18, 1979;

2) Judge Aspen—in ex parte communication accepting an unknown ROBERT WARD, alleged insurance ad-

ministrator on outright lie of Defendants THOMAS BROWN, PAUL HEINEKE,—who created him in place of the guilty JOE HANNON, who illegally transferred $550,000,000 with the knowledge and consent of the ATTORNEY FOR THE BOARD, MICHAEL J. MURRAY—that JOE HANNON was appointed by the same MAYOR JANE BYRNE, who pays a $50,000 yearly salary to the wife of Chief Justice Walter C. Cummings, who failed to disqualify himself from this suit after three full years of ex parte communications with Defendants BROWN, HEINEKE—And in the records of this Complaint, January, 1979 is the resignation of another Chief Justice Seventh Circuit Court of Appeals, Judge Diedrich, who was involved in an Arlington Race Track Scandal—along with certain politicians.

For the above reasons, the rulings of these judges denying Plaintiff a Change of Venue should be reversed and Defendants held for trial outside the City of Chicago by impartial Judges unapproachable EX PARTE.

Or in the alternate, Petitioner-Plaintiff further requests that this decision be reversed in its entirety and Defendants be charged with previous costs, punitive, social and emotional damages.

Respectfully submitted,

ANABEL J. MCCUTCHEON, *Pro Se*
Apt. 3B: 1917 Tanglewood
Glenview, Illinois 60025
312-328-1630

CERTIFICATE OF SERVICE

Pursuant to the U.S. Supreme Court *Rules* Revised June 30, 1980, Rule #12.1, the Appellant is docketing this case on Dec. 17, 1981 by certified receipt. Petitioner hereby certifies that she mailed three copies to the attorneys of record, the Attorney General (pursuant to the violation of state statutes).

.....

Anabel J. McCutcheon

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APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

Civil Action File No. 81 C 0098

McCUTCHEON, Anabel. J.

vs.

BOARD OF EDUCATION, et al

JUDGMENT

This action came on for trial (hearing) before the Court, Honorable Marvin E. Aspen, United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered.

It is Ordered and Adjudged

Plaintiff's motion for a change of venue is denied. Finance Authority's and Van Gorkom's motions for summary judgment of dismissal are granted. Heineke's Zielinski's and Brown's motions for summary judgment are granted. Board of Education's and Smith's motions for summary judgment are granted. Board of Education and Heineke's motions for judgment on their counterclaim are denied. (draft)

/s/ H. Stuart Cunningham
H. Stuart Cunningham
Clerk

Deputy Clerk of Court

Dated at Chicago, Illinois,
this 1st day of June, 1981.

June 1, 1981 Decision of Marvin E. Aspen with inadequate notice of hearing to Plaintiff by Defendants (mailed after hearing).

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable Marvin E. Aspen

Cause No. 81 C 0098 Date June 1, 1981

Title of Cause:
McCutcheon v. Board of Education, et al

Brief Statement of Motion:

ORDER

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Name and Addresses of moving counsel:

Representing:

Names and Addresses of other counsel entitled to notice and names of parties they represent.

Plaintiff's motion for a change of venue is denied. Finance Authority's and Van Gorkom's motions for summary judgment of dismissal are granted. Heineke's, Zielinski's and Brown's motions for summary judgment are granted. Board of Education's and Smith's motions for summary judgment are granted. Board of Education and Heineke's motions for judgment on their counterclaim are denied. (draft) Status hearing set for June 12, 1981 is stricken.

Marvin E. Aspen.

Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 81 C 0098

ANABEL J. McCUTCHEON,

Plaintiff,

v.

BOARD OF EDUCATION, CITY OF CHICAGO, KENNETH SMITH, JAMES SCANLON, CHICAGO FINANCE AUTHORITY, JEROME VAN GORKOM, PAUL H. HEINEKE, CHRISTINE, ZIELINSKI, and THOMAS BROWN,

Defendants.

MEMORANDUM OPINION AND ORDER

MARVIN E. ASPEN, District Judge:

This is one of a series of lawsuits filed by plaintiff Anabel J. McCutcheon ("McCutcheon"), *pro se*, against the Board of Education of the City of Chicago ("the Board"), and a host of other parties, who have been affiliated with the Board in the past, arising out of McCutcheon's termination as a teacher and principal in the Chicago public school system effective October 5, 1977.[1] This matter is presently before the Court on the defendants' motions to dismiss or, in the alternative, for summary judgment on a variety of grounds. For the reasons set forth below, the defendants' motions will be granted.

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[1] McCutcheon's suspension and eventual termination after a hearing were upheld by the Circuit Court of Cook County (Judge Nordberg presiding) in McCutcheon v. Board of Education, No. 77 L 21626 (October 22, 1979), *affirmed*, No. 79-1778, ... Ill.App.3d ..... (1st Dist. 1979).

In the instant action, McCutcheon alleges that the defendants—the Board and Board President Reverend Kenneth Smith ("Smith"); the Chicago School Finance Authority ("the Finance Authority") and Finance Authority Chairman Jerome Van Gorkom ("Van Gorkom"); and attorneys James Scanlon ("Scanlon"), Paul Heineke ("Heineke"), Christine Zielinski ("Zielinski"), and Thomas Brown ("Brown"), all of whom have represented the Board and Board employees in legal proceedings instituted by McCutcheon since 1976—acted individually and/or conspired together "to terminate Plaintiff's employment, to deprive her of a means of livelihood, and to deny her a public jury trial in the matter of her wrongful dismissal." Complaint at ¶ 13. McCutcheon further alleges that defendants Heineke, Zielinski, and Brown have continually represented the Board and other persons without legal authorization, that they have suppressed evidence to which she claims to be entitled, and that they have harassed and intimidated her in their various encounters in state and federal court since 1976. Complaint at ¶¶ 14, 15, 16. McCutcheon also claims that the Board, Smith, the Finance Authority, and Van Gorkom have failed to terminate the Board's allegedly unlawful contracts for legal representation with Heineke, Zielinski, and Brown and that they have failed to recover monies spent by the Board for such alleged "misrepresentation." Complaint at ¶¶ 17, 18, 19. The actions of all the defendants are alleged to be in violation of 42 U.S.C. §§ 1983, 1985, and jurisdiction is asserted under 28 U.S.S. § 1343.[2]

McCutcheon prays for a writ of mandamus restoring her to her previous position as principal of the Audubon schools with back pay and damages, and an injunction against "any secret, retroactive contracts with Attorneys

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[2] McCutcheon also asserts jurisdiction under the so-called "Shakman Decree" in Shakman v. Democratic Organization, 356 F.Supp. 1241 (N.D. Ill. 1972). However, that case is completely irrelevant to the case at bar.

Heineke, Brown, and Zielinski and any members of their Law Firms" together with recovery to the Board of all funds paid to these attorneys between 1976 and 1980. McCutcheon also seeks the reinstatement of Nancy Gottlieb Pearson, not a party to this suit, to her former position as a teacher at the Audubon School.

McCutcheon's Motion For a Change of Venue

As a threshold matter, McCutcheon has moved for a change of venue apparently on the ground that the Court is personally prejudiced or biased against her. 28 U.S.C. § 144. The gravaman of her motion seems to be her perception that she has been treated differently than the defendants by the Court during the relatively short gestation of this case. McCutcheon offers no evidence to support this claim; nor is such claim correct. McCutcheon, proceeding *pro se,* has been treated by the Court precisely as are other defendants, represented by legal counsel. Moreover, at each step, the Court has taken time to explain to McCutcheon the procedures followed in our federal practice and the Court has urged defense counsel to proceed with the same understanding.

In any event, it is well-settled that a judge may not be disqualified for bias or prejudice alleged to have developed during the course of the proceeding in which disqualification is sought. *United States* v. *Grinnel Corp.*, 384 U.S. 563, 583, 86 S.Ct. 1698, 1710 (1966); *Wolfson* v. *Palmieri,* 396 F.2d 121, 124 (2d Cir. 1968). The party seeking disqualification or recusal of the trial judge must point to specific incidents or statements by the judge said to evidence bias or prejudice arising from sources outside the courtroom. McCutcheon has failed to identify any such incidents or statements by the Court in support of her allegations of bias, other than her general dissatisfaction with the amount or paper—motions, memoranda, counter-claims, subpoenas, and summonses—that her lawsuit has generated. Accordingly, McCutcheon's

motion for a change of venue based upon the Court's alleged prejudice or bias is denied.[3] It is so ordered.

Van Gorkom's and the Finance Authority's Motions

Van Gorkom moves to dismiss the complaint as to himself for lack of subject matter jurisdiction Fed.R.Civ.P. 12(b) (1), and for failure to state a claim upon which relief can be granted, Fed.R.Civ.P. 12(b) (6), or, in the alternative, for summary judgment pursuant to Fed.R.Civ. P. 56. The Finance Authority joins in Van Gorkom's motion asserting the additional ground of insufficient service of process, Fed.R.Civ.P. 12(b) (5), in support of dismissal.

The claims against Van Gorkom and the Finance Authority in McCutcheon's complaint are identical, and they fail to state a cause of action under 42 U.S.C. § 1983 or § 1985 against either defendant. The alleged wrongs suffered by McCutcheon, the termination of her employment, the denial of a public jury trial and access to appeal, occurred well before the creation of the Finance Authority, of which Van Gorkom is chairman, in January, 1980. Neither the Finance Authority nor Van Gorkom may be held responsible under 42 U.S.C. § 1983 for any injury to McCutcheon that pre-dates the creation of the agency and the appointment of Van Gorkom since they could not have acted under color of state law prior to that date. Moreover, Van Gorkom and the Finance Authority may not be held responsible for not terminating the asserted contracts between the Board and attorneys Heineke, Zielinski, and Brown after January, 1980, since Ill.Rev.Stat. ch. 122, §§ 34A-401 (1980) specifically provides "that the Authority shall have no power to impair any existing contract or obligation of the Board." Since McCutcheon's

---

[3] McCutcheon has also moved for a change of venue from Magistrate Sussman, who has been supervising discovery in this matter. That motion was referred to the Executive Committee by Magistrate Sussman and was denied by Minute Order dated May 14, 1981. (Parsons, J).

prior litigation against the Board was virtually completed in 1979, the Finance Authority and Van Gorkom could have done nothing to either help or harm McCutcheon by the time they assumed their duties in January, 1980. Similarly, litigation subsequent to that date is covered by the renewed contract for legal representation entered in April, 1979, prior to the creation of the Finance Authority and Van Gorkom's appointment.[4]

McCutcheon has also failed to state a claim under 42 U.S.C. § 1985. She has not alleged any class-based discriminatory animus as required under section 1985. *See Hampton* v. *Hanrahan,* 600 F.2d 600 (7th Cir. 1979), *reversed on other grounds,* 446 U.S. 754 (1980). Even assuming that McCutcheon's "class of one" would qualify for protection under that section, her "class" did not exists until after the alleged acts of the defendants. Thus, as the Seventh Circuit recognized in *Askew* v. *Bloemaker,* 548 F.2d 673, 678 (7th Cir. 1976), "no 'clas-based discriminatory animus' could have motivated the defendants, actions, and the plaintiff [has] not met the prerequisites to a § 1985(3) claim under *Griffin* [v. *Breckenridge,* 403 U.S. 88, 102 (1971]."

Accordingly, the Finance Authority's and Van Gorkom's motions for summary judgment of dismissal are

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[4] As set forth more fully in the discussion of the Board's and Smith's motions for summary judgment, *infra,* the Board retained Heineke, Zielinski, and Brown pursuant to its statutory obligation to insure or indemnify against costs of defense and liability in certain classes of actions brought against the Board or Board employees. The attorneys were initially retained for a three-year period running from April 21, 1976, to March 31, 1979. The contract was subsequently renewed and extended through March 31, 1982. Retention of counsel was on a "per occurrence" basis so that the time of the occurrence rather than the filing of the lawsuit is the controlling factor. Representation was to extend throughout the appellate process. *See* Affidavit of Robert L. Ward, Insurance Administrator of the Board (March 13, 1980).

granted, there being no genuine issue of fact material to a judgment in their favor.[5] It is so ordered.

Heineke's, Zielinski's, and Brown's Motions

Heineke, Zielinski, and Brown[6] have moved for summary judgment on the grounds that they did not act under color of state law for purposes of McCutcheon's claim under 42 U.S.C. § 1983 and that McCutcheon has not alleged any class-based discriminatory animus for purposes of her claim under 42 U.S.C. § 1985. The basis of McCutcheon's claims against these three attorneys is their representation of the Board, its members, or its employees in numerous lawsuits filed by McCutcheon over the past several years.[7] As succinctly stated by Judge Perry of this Court several years ago in *Dear* v. *Rathje*, 391 F. Supp. 1, 7-8 (N.D. Ill. 1975), "[i]t has long been held that a lawyer who represents a client as an attorney and is not a party in interest does not act under color of law within the meaning of the Civil Rights Acts." *See*

---

[5] The Court has assumed for the purpose of resolving these motions on the merits that the Finance Authority was properly served with process at the commencement of this action. It should be noted, however, that McCutcheon's attempt to effect service on the Authority by serving its attorneys, Schiff, Hardin & Waite, with an alias summons is insufficient as a matter of law under either Fed.R.Civ.P. 4(d) (6) or Ill.Rev.Stat. ch. 110, § 18 (1979).

[6] McCutcheon moved for a default judgment as to Brown for his failure to answer the the complaint or otherwise plead within the requisite time period. Brown has since answered the complaint thereby rendering McCutcheon's motion moot.

[7] Although McCutcheon also named James Scanlon, an assistant attorney in the Law Department of the Board, as a defendant herein, Scanlon has apparently not been served with process and he is not now a party to this case. Moreover, McCutcheon seeks no relief as to Scanlon and the complaint fails to state a claim against him.

also Hansen v. *Ahlgrimm,* 520 F.2d 768, 770 (7th Cir. 1975); *Skolnick* v. *Martin,* 317 F.2d 857 (1963). McCutcheon's conclusory allegations of conspiracy involving some state actors are insufficient to overcome this defect. *Hansen* v. *Ahlgrimm, supra.* In addition, McCutcheon's claims against these defendants under section 1985 fail for the reasons set forth above with respect to the section 1985 claims against Van Gorkom and the Finance Authority. *See Askew* v. *Bloemaker, supra,* 548 F.2d at 678.

Accordingly, Heineke's, Zielinski's, and Brown's motions for summary judgment are granted. It is so ordered.

The Board's and Smith's Motions

The Board and Smith move for summary judgment pursuant to Fed.R.Civ.P. 56 on the grounds that McCutcheon has not stated a claim against them upon which relief can be granted and that any claim that could be inferred from the complaint arises from her termination as a Board employee in 1977, which claim is barred by the doctrines of res judicata and collateral estoppel in light of prior state and federal decisions dealing with the same parties and issues. The Court agrees.

The only claim raised in the complaint against the Board or Smith appears to be that they violated an alleged "duty" to "void any secret or retroactive agreements made with defendant Attorneys Heineke, Brown, Zielinski and to direct defendant Attorney James Scanlon to terminate his defense of Board Employees." Complaint ¶¶ 17, 18. According to the Illinois statutory scheme, the Board is required to insure or indemnify against suits against the Board or Board employees arising from, among other claims, any "alleged violation of civil rights occurring on or after September 5, 1967." Ill.Rev.Stat. ch. 122, § 34-18.1 (1979). Pursuant to this statutory directive, the Board hired attorneys Heineke, Zielinski, and Brown under a contract which originally ran from April 1, 1976, through March 31, 1979, and which was renewed

for an additional three-year period ending March 31, 1982. *See generally* Affidavit of Robert L. Ward, Insurance Administrator of the Board of Education of the City of Chicago (March 13, 1981) and footnote 4, *supra*. There is absolutely no support stated in the complaint for McCutcheon's allegations that the Board or Smith wrongfully failed to void any "secretive or retroactive contracts," Complaint at ¶ 17, or that they "wilfully and maliciously" incurred liability for attorneys' fees and costs, Complaint at ¶ 18. Thus, the complaint fails to state a claim against the Board or Smith, even under the liberal federal pleading standards.

Moreover, to the extent that McCutcheon is attempting to relitigate her underlying claims that she was wrongfully terminated from her position as principal of the Audubon school, decided adversely to her in *McCutcheon* v. *Preston*, No. 78 C 3955 (N.D. Ill., Nov. 26, 1979) and *McCutcheon* v. *Board of Education*, No. 78 C 3899 (N.D. Ill., Nov. 28, 1979) (Leighton, J.), in addition to various state proceedings, such an attempt is barred by principles of res judicata and collateral estoppel. *Samuel C. Ennis & Co., Inc.* v. *Woodmar Realty Co.*, 542 F.2d 45, 49 (7th Cir. 1976), *cert. denied*, 429 U.S. 1096 (1977). Accordingly, the Board's and Smith's motions for summary judgment are granted. It is so ordered.

Heineke's and the Board's Motion for Judgment on Their Counterclaim

As a final matter, certain defendants seek judgment on their counterclaim for an injunction restraining McCutcheon from filing any more motions in the present action and permanently enjoining the filing of any future actions against these defendants. They argue that "[t]he axiom that a person should have free access to the judicial process must be balanced against that person's abuse of the judicial process." Memorandum in Support of Counterclaim at 9. *See Gutman* v. *Gutman*, 65 Ill.App.2d 44, 212 N.E.2d 699 (1st Dist. 1965); *Ziebell* v. *Village of*

Posen, 257 Ill.App. 32 (1st Dist. 1930); *Adams* v. *Oberndorf*, 121 Ill.App. 497 (1st Dist. 1905).

While we would admonish McCutcheon to refrain from filing any subsequent lawsuits raising the issues considered in this opinion, in the Court's view there are other less drastic remedies for any future abuse of judicial process than the rather broad ranging injunction sought by the defendants herein. Should McCutcheon persist in relitigating the issues disposed of in this action, we would assume that defendants would bring this opinion to the attention of the trial court in support of their motions for remedies. Accordingly, the motion for judgment on the counterclaim is denied. It is so ordered.

Marvin E. Aspen
/s/ Marvin E. Aspen
United States District Judge

DATED: 6/1/81

APPENDIX B

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
September 18, 1981

Before

Hon. WALTER J. CUMMINGS, Chief Judge
Hon. WILLIAM J. BAUER, Circuit Judge
Hon. HARLINGTON WOOD, JR., Circuit Judge

ANABEL J. McCUTCHEON,
Plaintiff-Appellant,

No. 81-1987

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 81-C-0098
Marvin E. Aspen, *Judge*.

This matter is before the court upon the following:

1. MOTION TO DISMISS PLAINTIFF-APPELLANT'S APPEAL OF JUNE 15, 1981;
2. REPLY OF DEFENDANTS-APPELLEES JEROME VAN GORKOM AND THE CHICAGO SCHOOL FINANCE AUTHORITY TO MOTION TO DISMISS PLAINTIFF-APPELLANT'S APPEAL OF JUNE 15, 1981;
3. MOTION OF PLAINTIFF-APPELLANT TO FILE HER BRIEF AND ARGUMENT INSTANTER;

4. BRIEF AND ARGUMENT OF PLAINTIFF-APPELLANT, treated, in part, as a PETITION FOR A WRIT OF MANDAMUS;

5. RESPONSE TO PLAINTIFF'S MOTION TO FILE HER BRIEF AND ARGUMENT INSTANTER; and

6. MOTION OF DEFENDANT, THOMAS P. BROWN TO JOIN IN RESPONSE OF CO-DEFENDANTS TO PLAINTIFF'S MOTION TO FILE HER BRIEF AND ARGUMENT INSTANTER.

Upon consideration thereof,

IT IS HEREBY ORDERED that this appeal is DISMISSED.

IT IS FURTHER ORDERED, that a WRIT OF MANDAMUS is DENIED.

IT IS ALSO FURTHER ORDERED that plaintiff-appellant's motion to file their brief instanter is hereby GRANTED and the clerk of the court is directed to file instanter herein *nunc pro tunc* as of August 11, 1981, the fifteen tendered copies of plaintiff-appellant's brief.

APPENDIX C

Heineke & Schrader
135 South LaSalle Street
Chicago 60603

October 16, 1978

Honorable H. Stuart Cunningham
Clerk of the United States District Court
Northern District of Illinois
Eastern Division
219 South Dearborn Street, 20th Floor
Chicago, Illinois 60603

Re: Anabel J. McCutcheon vs.
The Board of Education, et, al,
United States District Court
Case No. 78-C-3899
Our file No. 103,245

Dear Mr. Cunningham:

I am one of the attorneys in an action pending in the United States District Court, for the Northern District of Illinois, Eastern Division, captioned Anabel J. McCutcheon v. Board of Education City of Chicago, and about 27 other individual defendants. The case is No. 76-C-4763 and is presently assigned to Judge Leighton.

Jurisdiction of Count I is invoked pursuant to Title 7 of the Civil Rights Act of 1964 (42 USC 2000e, et seq.) pending and undecided as yet a motion to dismiss.

Jurisdiction is invoked under Count III pursuant to the Fair Labor Standards Act of 1938 and 28 USC 1337.

Jurisdiction in Count IV is invoked pursuant to 28 USC 1343 since plaintiff seeks to redress the deprivations of rights under the law secured by the 14th Amendment to the United States Constitution and 28 USC 1983.

On October 3rd, 1978, plaintiff, pro se, filed an action in the United States District Court, for the Northern District of Illinois, Eastern Division, against the Board of Education of the City of Chicago, Michael J. Murray, Mrs. Carey, B. Preston, Earl B. Hoffenberg, Joseph P. Hannon, William Rohan Gerard J. Heing and Mario Garofalo. The case received No. 78-C-3899 and was assigned to Judge Grady.

In the complaint plaintiff alleges that the action is for declaratory relief, injunctive relief and damages, to redress the deprivation of rights, and the jurisdiction of the court being invoked pursuant to the 5th and 14th Amendments of the United States Constitution and 42 USC 1983 and 42 USC 1985.

Miss McCutcheon, after a hearing, was dismissed by the Board of Education as principal of Audubon School and has pending an administrative action in the state court.

In our opinion, action 78-C-3899 grows out of the same transaction as is the predicate for the action brought and assigned No. 76-C-4763 and now pending before Judge Leighton. The basis for both claims, in our opinion, clearly relate to violations by Board of Education and some of its employees, at least insofar as Count IV is concerned, as redress is claimed for deprivations under the color of law of rights, privileges and immunities under the 14th Amendment of the United States Constitution and 42 USC 1983.

In addition to 78-C-3899 there is pending before the United States District Court two additional lawsuits which grow out of the same transaction, 78-C-3894 and 78-C-3955. Counsel representing the defendants in those cases also intend to seek consolidation before Judge Leighton.

It seems that a decision in 76-C-4763 could or might have a chilling effect on 78-C-3899. To avoid the duplication, both by judges of the United States District Court, for the Northern District of Illinois, Eastern Division, and counsel representing the defendants, consolidation of 78-C-3899 into and with 76-C-4763 is recommended.

Respectfully submitted,

PHH:GP

cc: Miss Anabel J. McCutcheon
1917 Tanglewood Drive, Apt. 3B
Glenview, Ill. 60025
2653 Stewart Avenue
Evanston, Ill. 60201
[Harassment of Family ignored by Court]

APPENDIX D

October 16, 1978

Honorable H. Stuart Cunningham
Clerk of the United States District Court
Northern District of Illinois
Eastern Division
219 South Dearborn Street - 20th Floor
Chicago, Illinois 60603

Re: Anabel J. McCutcheon v. Board of Education, et. al.
Case No. 78 C 3894
Case No. 78 C 3955

Dear Mr. Cunningham:

On October 3, 1978, and subsequent, plaintiff, *pro se*, filed these actions in the United States District Court, for the Northern District of Illinois, Eastern Division, against the Board of Education of the City of Chicago, Mrs. Carey B. Preston, Mrs. Margaret Wild, Mr. Henry McGee, Mr. Herbert Johnson, Dr. Joseph P. Hannon and Dr. Nina Jones (78 C 3894); and Mrs. Carey B. Preston, Mr. Earl Hoffenberg and Dr. Joseph P. Hannon (78 C 3955). Both cases are assigned to the Honorable Prentice Marshall.

In these complaints, plaintiff alleges that the action is for declaratory relief, injunction relief, and compensatory and punitive damages, to redress the deprivation of rights, and the jurisdiction of the court is invoked pursuant to the United States Constitution and 42 U.S.C. 1983, 1985 and 1988.

Miss McCutcheon, after a hearing, was dismissed by the Board of Education as principal of Audubon School and has pending an administrative action in the state court.

Pending in this court is case No. 76 C 4763, entitled Anabel McCutcheon v. Board of Education of the City of Chicago, et al. (approximately 27 additional individual defendants). This case is assigned to Judge Leighton.

Jurisdiction of Count I is invoked pursuant to Title 7 of the Civil Rights Act of 1964 (42 U.S.C. 2000e, et seq.). Count II is against the Principals Association. There is pending and undecided as yet a motion to dismiss.

Jurisdiction is invoked under Count III pursuant to the Fair Labor Standards Act of 1938 and 28 U.S.C. 1337.

Jurisdiction in Count IV is invoked pursuant to 28 U.S.C. 1343 since plaintiff seeks to redress the deprivations of rights under the law secured by the 14th Amendment to the United States Constitution and 28 U.S.C. 1983.

In 78 C 3894, the plaintiff pleads, by paragraph 8:

> During the time period, 1973 through October 3, 1977 all defendants above were— and still are— respondents in plaintiff's chancery suit (73 CH 1355); EEOC, FEPC charges, 1974-1976; and in plaintiff's Equal Pay Suit now pending trial (76 C 4763)—the "Right to Sue Letter" having been requested of the Department of Justice (through EEOC) before July 28, 1976, a full three months before plaintiff's suspension.

In our opinion actions 78 C 3894 and 78 C 3955 grow out of the same transaction as is the predicate for the action brought and assigned No. 76 C 4763 and now pending before Judge Leighton. The basis for both claims, in our opinion, clearly relate to violations by the Board of Education and some of its employees, at least insofaras Count IC is concerned, as redress is claimed for deprivation under the color of law of rights, privileges and immunities under the 14th Amendment of the United States Constitution and 42 U.S.C. 1983.

In addition to 78 C 3894 and 78 C 3955 there is pending before the United States District Court one additional lawsuit which grows out of the same transaction, 78 C 3899. Counsel representing the defendants in that case also intend to seek consolidation before Judge Leighton.

It seems that a decision in 76 C 4763 could or might have a chilling effect on 78 C 3894 and 78 C 3955. To avoid the duplication, both by judges of the United States District Court, for the Northern District of Illinois, Eastern Division, and counsel representing the defendants, consolidation of these cases into and with 76 C 4763 is recommended.

Very truly yours,

Thomas P. Brown

cc. Miss Anabel J. McCutcheon
1917 Tanglewood Drive, Apt. 3B
Glenview, Illinois 60025

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

ANABEL J. MCCUTCHEON

v. No. 78 C 3894

BOARD OF EDUCATION, et al.

I, THE UNDERSIGNED, HEREBY FILE MY APPEARANCE AS ATTORNEY FOR

Chicago Board of Education, Mrs. Carey B. Preston, Mrs. Margaret Wild, Mr. Henry McGee, Mr. Herbert Johnson, Dr. Joseph P. Hannon, Dr. Nina Jones

Thomas P. Brown
5343 Leland Ave.
Chicago, IL. 60630
282-5125

Trial Attorneys*
Thomas P. Brown

* Request is made for trial attorney to avoid possible conflicts in scheduling.

Dated: October 20, 1978

Type of Defense Counsel:
Retained X

APPENDIX E

March 20, 1981—Affidavit in Answer to Plaintiff's Motion to Compel Answer of the City of Chicago—subpoena, Mayor Jane Byrne, City Corporation Counsel

I, Stanley Garber, being first duly sworn on oath, deposes and states as follows:

I am the Corporation Counsel of the City of Chicago;

I am in receipt of a Subpoena Duces Tecum served upon my office;

Such Subpoena requests the production of certain records or in the alternative, a sworn affidavit that requested records do not exist.

Pursuant to such Subpoena I have caused an examination of records maintained by my office to determine whether or not the requested records exist. This examination indicated that:

a. Attorneys Paul Heineke, Christine Zielinski and Thomas Brown are not employed as attorneys by the Office of the Corporation Counsel of the City of Chicago and to my knowledge were never so employed;

b. We have no pay records for any of the three attorneys indicated above.

/s/ Stanley Gerber
/s/ Stanley Gerber
Corporation Counsel of
the City of Chicago

Subscribed And Sworn to
before me this 2nd day
of March, 1981.

.....
Notary Public

MAR 3 1981
Judge Marvin E. Aspen
U.S. District Court

2. pay records of all Board funds paid to private attorneys Heineke, Zielinski, Sept., 1976-to date.

3. pay records of Salary Administrator, Thomas Finnegan and name of his superior, who approved his paid vacation, Nov. 1-Nov. 13, 1979 out of the jurisdiction of the Court.

4. a certified copy of the report of Salary Administrator, Thomas Finnegan to the Chicago Schools Finance Authority of the overpayment of $10,000 salary to one Karl Siewers in accordance with his testimony in 76 C 4763 Dec. 17, 1979 to April 4, 1980.

5. The present whereabouts of James Scanlon, who was a subordinate in the Law Department.

together with all copies, drafts, and vouchers relating to the said documents, and all other documents, letters, and paper writings whatsoever, that can or may afford any information or evidence in said cause. And this you shall in nowise omit, under the penalty of the law in that case made and provided.

To the Marshal of the Northern District of Illinois to execute and return in due form of law.

H. Stuart Cunningham
[SEAL] Clerk

BY .....
Deputy Clerk

Dated: .....

APPENDIX F

Excerpt p. 3 John A. Nordberg

9. The following decisional authorities, together with the applicable constitutional and statutory provisions cited by the parties including the Administrative Review Act and the School Code (i.e. Ill. Rev. Stat. ch. 122, 34-85, et al.), set forth the law applicable to this proceeding:

1. *Grissom* v. *Board of Education*, 75 Ill. 3d 667 (1979).
2. *Gilliland* v. *Board of Education*, 67 Ill. 2d, 143 (1973-1977).
3. *Alwurn* v. *Board of Education*, 67 Ill. 2d, 434 (1977).
4. *Carrao* v. *Board of Education of the City of Chicago*, 46 Ill. App. 3d, 33 (1977).
5. *Morelli* v. *Board of Education*, 42 Ill. App. 3d, 722 (1976).
6. *Fender* v. *School District No. 25*, 37 Ill. App. 3d, 736 (1976).
7. *Flynn* v. *Board of Fire and Police Commr.*, 33 Ill. App. 3d, 394 (1975).
8. *Glover* v. *Board of Education*, 21 Ill. App. 3d, 1053 (1974).
9. *Rizzo* v. *Board of Fire and Police Commr.*, 131 Ill. App. 2d, 229 (1971).
10. *Robinson* v. *Community High School Dist. No. 7*, 35 Ill. App. 2d, 325 (1962).
11. *Bridgeport Tp. High School Dist.* v. *Shank*, 7 Ill. App. 2d, 183 (1955).
12. *Joyce* v. *Board of Education of City of Chicago*, 325 Ill. App. 543, 60 N.E. 2d 431 (1945; Cert. den. 327, U.S. 786, 66 S. Ct. 702).

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED by the Court that the aforementioned decision rendered by the defendant School Board in this proceeding, wherein plaintiff was dismissed from the services of the Board of Education of the City of Chicago, be, and the same is hereby affirmed.

ENTERED:

.....

John A. Nordberg, Judge

DATED: October 22, 1979

ADVOCATE

Published as a service to all members by the Illinois Education Association

Mel Smith, President
Dr. Curtis Plott, Executive Secretary
Phil Wright, Editor

SUPREME COURT TIGHTENS DISMISSAL LAW

The Illinois Supreme Court has ruled that a tenured teacher shall be given reasonable warning in writing prior to any action taken to dismiss.

In overturning the decisions of the appellate and circuit courts in the case of Roy Alwurm, the Supreme Court clearly stated that a mere laundry list of charges ii not enough to dismiss a tenured teacher.

The case arose out of the Murphysboro Community Unit District 186's attempt to fire teacher Roy Alwurm. In January of 1975, Alwurm was presented a list of charges ranging from insubordination, to lack of care for school property, and failure to carry out tasks assigned, to lack of preparation. In Alwurm's case, the list of charges was accompanied by the statement that the board was going to fire him.

Testimony developed during the course of trials showed that Alwurm was never given the opportunity to remediate what the administration saw as grounds for dismissal.

Remediation, as the Court pointed out in its opinion, requires according to the School Code . . . "reasonable warning in writing, stating specifically the causes which, if not removed, may result in charges."

In Alwurm's case, all of the so-called infractions were of a minor nature, and based on testimony, were judged remediable by the court.

Interestingly, the court recently ruled in Gilliland vs. Board of Education (1977) that uncorrected causes for dismissal which originally were remediable in nature can become irremediable if continued for a long period of time.

The standard with which the Court seems to be judging such cases involving remediation seems to be that boards must give notice to correct deficiencies except when, as in Gilliland, the causes were continued over an extraordinarily long period of time.

APPENDIX G

Sunday Sun-Times, December 13, 1981

DUNNE FIRM HOLDS 90% OF INSURANCE AT McCORMICK PL.

By Thomas Burton

An insurance agency owned by Cook County Board President George W. Dunne has taken over nearly 90 percent of the $275,000-a-year insurance business at McCormick Place through a series of no-bid contracts.

McCormick Place records made available to the Sun-Times show that Dunne's firm, Near North Insurance Agency Inc., 150 E. Huron, receives annual premiums of $246,011 from the exposition center, which is supported by state funds.

McCormick Place pays total annual premiums of about $275,000, the records show.

Near North, co-owned by Cook County Democratic chairman Dunne and his partner Michael Segal, keeps a percentage commission from the premiums and pays the rest to insurance companies. Segal would not say how much Near North keeps in commissions each year.

He did, however, provide estimated percentage levels for commissions that would put the agency's annual commissions on McCormick Place business at around $20,000.

McCormick Place staff members, including managing director Joseph P. Hannon, defended the current no-bid insurance setup. "I think the critical question is the type of coverage we're getting and whether the cost is commensurate with the coverage," Hannon said. "Those criteria are being met."

Some members of the Metropolitan Fair and Exposition Authority, the board overseeing McCormick Place, questioned the no-bid arrangement in interviews with the Sun-Times.

Thea Flaum, vice chairman of the board, said, "I certainly think it's important that we look into competitive bidding on our insurance policies just as we already have on our electrical contract [another contract which was bid for the first time this year]. That often proves to be the best way to go."

The convention hall is run by a 12-member board, six of whose members are appointed by the mayor of Chicago and six by the governor of Illinois. They serve five-year terms.

Dunne and Segal said in interviews that politics played no role in the insurance business their agency obtained at McCormick Place in recent years.

Dunne acknowledged, however, that politics was important during the 1960s when Near North originally obtained the fire insurance for McCormick Place. But he said politics was not involved in Near North's 1979 acquisition of insurance business from the exposition hall worth more than $170,000 in annual premiums.

Said Dunne: "Initially, that insurance had a political connotation to it. [The late state] Sen. [William J.] Connors, who I worked for—his company had the insurance originally. I worked in his firm. When I went into business myself, I got the business."